



Comptroller of the  
State of New York



Treasurer of the  
State of California



Treasurer of the  
State of North Carolina

#12

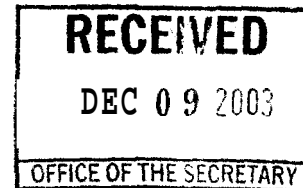
ES104709

VIA FACSIMILE/MAIL

November 20, 2003

SR-NYSE-2003-34

The Honorable William H. Donaldson  
Chairman  
United States Securities and Exchange Commission  
450 5<sup>th</sup> Street, N.W.  
Washington, D.C. 20541



Dear Mr. Chairman:

We are writing to urge you to complete the **task** of reforming the New York **Stock** Exchange (NYSE), so that it can regain the public trust and resume its role as a leader in our financial markets. As state financial officers and fiduciaries of public **pension** funds, we **believe** that restoration of the public's faith in our financial institutions, **including** the NYSE, is critical to the recovery of our financial markets and to our sustained economic progress.

The disclosures earlier this fall regarding Richard Grasso's compensation package, as well as the breakdown in corporate governance at the NYSE, damaged the investing public's confidence in the Exchange, and demonstrated that some of the problems that precipitated the market crisis of the last two years were reflected in the conduct of the NYSE itself. In September, we urged the United States Securities and Exchange Commission (SEC) and the NYSE to take significant action to regain the confidence of the millions of investors who trade on the Exchange. (A copy of our September 24 statement is attached.)

Specifically, we urged you to act **immediately** to undertake an exhaustive, **independent** examination of the NYSE's operations and governance, including an investigation of the circumstances that led to Mr. Grasso's **pay package**. **Absent** action by the SEC, we requested that the **NYSE** conduct such a review on its own. In addition, we urged the NYSE to embrace comprehensive and fundamental reforms, including: restructuring to ensure that the NYSE serves the interests of the investing public, separating the regulatory function from other business functions and eliminating conflicts of interest; and *setting* the highest standards of governance – both for the NYSE's regulated companies and for itself.

The NYSE has now approved a series of governance changes, as proposed by John Read, the NYSE Interim Chair. These changes, however, fall short of the principles we laid out and, in our view, are insufficient to restore the trust of the investing public. Accordingly, we

November 20, 2003

Page 2

urge you to take the necessary next steps to finish the job of reforming the NYSE, the largest and most widely invested national market exchange. At a minimum the SEC should require the NYSE to implement changes to accomplish the following:

- **Long-Term Independence of the Directors.** The proposed plan does not adequately guarantee that the board will – over time – maintain true independence. For example, the proposal does not require significant representation on the board by the NYSE's ultimate constituency, the investing public. In our September proposal, we called for investor representation on the board, and that recommendation was included in the October 2, 2003 "Recommendations of the Special Committee on Governance of the NYSE," co-chaired by Carl McCall and Leon Panetta. For reform to be meaningful, the Board should be restructured to guarantee – through dedicated positions – sufficient investor representation. To further ensure board independence, the roles of the Chair and the Chief Executive Officer should be formally separated.
- **True Separation of the Regulatory Function.** The proposed plan fails to adequately separate the NYSE's regulatory function from its business – or marketplace – function. So long as those functions are not meaningfully separated, the regulatory and enforcement functions will never be free from conflicts and partiality. Only when these functions are explicitly separate, with genuine firewalls, will the NYSE be able to fulfill its role as a protector of the integrity of the marketplace.

In addition to urging specific reforms, as noted above, we previously urged the SEC to conduct a full, independent examination of the circumstances that led to the former Chair and CEO's compensation package, and a review of all operations and governance matters. We recommended that this review include an assessment of responsibility and accountability for any problems or improprieties identified, as well as an audit of all compensation packages for high-level NYSE executives. To date, the SEC has declined to undertake this examination.

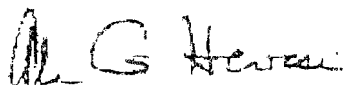
In the meantime, although Mr. Reed has commissioned an investigation of governance and compensation practices at the NYSE, he has indicated that the NYSE might not release this report publicly because the results could be "embarrassing." In our view, the NYSE has a duty to provide to the investing public an assessment of any issues or improprieties identified as a result of the evaluation, so that the public may evaluate whether proposed reforms are adequate, and whether the NYSE has taken steps that correct the problems that led to the diminution of public confidence.

Given these circumstances, we hope that the NYSE will release a report and, by separate letter to Mr. Reed, we will urge him to do so. If the NYSE opts not to release a report, we will again urge the SEC to undertake such an examination itself and to make the results

public, so that the investing public and the market in general may have a full understanding of all operations and governance issues that may inhibit the NYSE from properly fulfilling its mission. Only then will we be able to truly evaluate whether the challenge of reforming the NYSE has been genuinely met.

Thank you for your consideration.

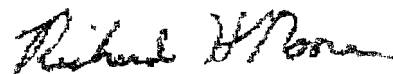
Sincerely,



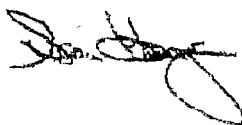
**Alan Hevesi**  
Comptroller  
State of New York



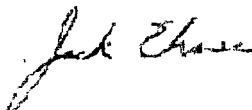
**Phil Angelides**  
Treasurer  
State of California




**Richard H. Moore**  
Treasurer  
State of North Carolina



**Sean Harrigan**  
President  
Board of Administration  
California Public Employees'  
Retirement System



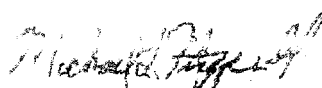
**Jack Ehnes**  
Chief Executive Officer  
California State Teachers'  
Retirement System



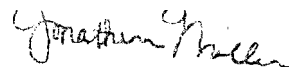
**Dale McCormick**  
Treasurer  
State of Maine



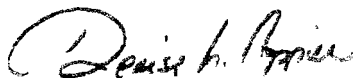
**Randall Edwards**  
Treasurer  
State of Oregon



**Michael Fitzgerald**  
Treasurer  
State of Iowa



**Jonathan Miller**  
Treasurer  
State of Kentucky



**Denise Nappier**  
Treasurer  
State of Connecticut



**Brian K. Krolicki**  
Treasurer  
State of Nevada

Attachment

cc: Members, U.S. Securities and Exchange Commission  
John Reed, Interim Chair, New York Stock Exchange

# RESTORING THE PUBLIC'S TRUST IN THE NEW YORK STOCK EXCHANGE

September 24, 2003

This is a pivotal moment for the New York Stock Exchange (NYSE), the investing public, and our nation's financial institutions. Much is at stake as America's financial markets struggle to recover from the effects of the worst wave of corporate scandals since the market manipulations of the late 1920s.

Unfortunately, during this critical timeframe, the NYSE has not fulfilled its central mission to protect investors and the marketplace. Further, the disclosures that led to the resignation of Richard Grasso as the NYSE's Chairman and Chief Executive Officer have revealed that some of the problems that precipitated the market crisis of the past two years are reflected in the conduct of the NYSE itself. It is clear that there is a need for fundamental, urgent, and sweeping reforms at the NYSE, to restore the faith and confidence of investors.

The resignation of Mr. Grasso, accepted by the NYSE Board of Directors on September 17, 2003, was a necessary first step in addressing the challenges facing the NYSE. The Board must now bring the saga of Mr. Grasso's resignation to an appropriate conclusion by doing all it can to ensure that Mr. Grasso's final compensation package is, in the end, rational and appropriate, and that the final details of all compensation ultimately received are made fully transparent.

As its next order of business, the NYSE and its Board must take immediate and decisive action to restore the Exchange's credibility and moral authority. Only by such action will it regain the trust and confidence of the millions of Americans who trade on the Exchange and rely upon it to serve the investing public in a manner that is fair, open, and transparent. Fundamental reforms must affirm the notion that the NYSE is not a private club established to protect and act only in the interests of its members, but rather an important American institution operated in the interests of investors, the financial marketplace, and the economy.

There is no doubt that the credibility of the NYSE – and of the Board itself – has been damaged. Merely tinkering with the rules that govern the NYSE will not be enough. Nor will simplistic or piecemeal solutions suffice to meet the challenges ahead. Indeed, given the recent harm to the reputation and credibility of the NYSE and its Board, it will be difficult – if not impossible – for the NYSE to regain the public's trust on its own. In this vein, we urge the following actions to ensure that the NYSE is able to resume its preeminent role as a leader in our financial markets, and can be held out to the world as a model of corporate governance.

## THOROUGH, INDEPENDENT EXAMINATION OF THE NYSE'S OPERATIONS AND GOVERNANCE

Today, we – fiduciaries of some of the nation's largest public pension funds – call for a thorough, independent examination and audit of the NYSE's operations and governance, including an investigation of all the circumstances that led to Mr. Grasso's compensation package. This review should also include an **assessment of responsibility and accountability** for any problems or improprieties that are **identified**, as well as an audit of all compensation packages for NYSE high-level executives. It must also include an **exhaustive review** of all operations and governance issues that may inhibit the NYSE and its Board from properly fulfilling their mission to serve the investing public.

The United States Securities and Exchange Commission (SEC) should act immediately to put in place this independent review. If the SEC does not act promptly, the NYSE should do so on its own, by selecting a credible, independent person to head the review, and by granting him or her sufficient resources to conduct the examination, and full access to all the NYSE's books, records, and other pertinent information.

### NYSE MUST EMBRACE COMPREHENSIVE REFORMS

The NYSE must embrace comprehensive and fundamental reforms to restore its credibility, to regain the public trust in the Exchange as a rightful leader in our financial markets, and to improve its market efficiency for the investing public. These reforms must, at a minimum, ensure that the NYSE will be able to meet the following objectives, which are essential to restoring the public's trust and confidence in the Exchange:

- **The NYSE Must Serve the Investing Public.** Any reforms must ensure that the NYSE serves the interests of what it describes as its "ultimate constituency," the investing public. Reforms should include fundamental restructuring of the Board by replacing existing Board members with increased investor representation, and substantially reducing the number of Board members from the current 27.
- **The NYSE Must Fulfill its Regulatory Mission without Conflicts or Hindrance.** Any reforms must be designed to enable the NYSE to fulfill its role as protector of the integrity of the marketplace – which is fundamental to America's free enterprise system and continued economic progress. Reforms should include separation of the regulatory function from other business functions, as well as elimination of all conflicts of interest that inhibit the NYSE and its

Board members from fully pursuing instances of fraud, abuse, and malfeasance.

- **The NYSE Must Set and Adhere to the Highest Standards of Governance, including Transparency.** The NYSE must **set** the **highest standards** of accountability and transparency for the companies it regulates – **both broker-dealers and listed companies**. **Equally important**, the **NYSE itself must meet or exceed** the **very standards it sets** for others. These standards **must include**, among **other things**:

- Full transparency of **executive compensation and all financial statements**;
- **True independence** of **key committees**, such as nomination, compensation, and audit committees; and
- **Other reforms** such as separation **between the roles of directors and management**.

- **Efficient Market Structure.** The market system that the NYSE oversees must **operate with optimal efficiency, for the benefit of investors** and the economy. To **this end**, any **reforms should** incorporate **successful** models from **other exchanges** throughout the world.

\*\*\*\*\*